

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC., FOR: 1) AN)	
ADJUSTMENT OF THE ELECTRIC RATES; 2))	CASE NO.
APPROVAL OF NEW TARIFFS; 3) APPROVAL)	2024-00354
OF ACCOUNTING PRACTICES TO ESTABLISH)	
REGULATORY ASSETS AND LIABILITIES;)	
AND 4) ALL OTHER REQUIRED APPROVALS)	
AND RELIEF.	

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN RESPONSES TO COMMISSION STAFF’S
APRIL 21, 2025 FOURTH REQUEST FOR INFORMATION**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, respectfully moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the identified portions filed in its responses to Commission Staff’s (Staff) Fourth Request for Information issued on April 21, 2025:

- (1) Confidential highlighted response to STAFF-DR-04-008.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes sensitive information related to vendor pricing and confidential contract negotiations.

I. MOTION FOR CONFIDENTIAL TREATMENT

a. Statutory Standard

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential.

Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The documents for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

b. Information for Which Confidential Treatment is Sought

i. Confidential highlighted response to STAFF-DR-04-008

Staff Request No. 04-008 states as follows:

Refer to Application, Volume 16, the Direct Testimony of James McClay pages 19-20. Provide the estimated cost (as well as the amount that would be included) in the PSM if Duke Kentucky decides to enter a capacity performance (CP) insurance policy. Include as part of the response an explanation of Duke Kentucky's actions to date to secure such a policy.

In response to Staff Request No. 04-008, Duke Energy Kentucky provides sensitive vendor pricing for potential insurance products. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

The highlighted information was derived through direct solicitations and is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element as disclosure of vendor pricing and contract negotiations would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have

a chilling effect on counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

c. Request for Confidential Treatment

The Kentucky Open Records Act exempts from disclosure information that, due to its confidential and proprietary nature, would permit “an unfair commercial advantage to competitors of the entity that disclosed the records” if openly disclosed.¹ The Confidential Information was, and remains, integral to Duke Energy Kentucky’s effective execution of business decisions. Indeed, as the Kentucky Supreme Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”² The information for which Duke Energy Kentucky is seeking confidential treatment is not on file publicly with any public agency, and is not publicly available from any commercial or other source. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the utility industry.

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of twenty years. This will assure that the Confidential Information—if disclosed after that time—will no longer be commercially sensitive so as to likely impair the interests of the Company if publicly disclosed.

To the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Duke Energy

¹ See KRS 61.878(1)(c)1.

² *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766, 768 (Ky. 1995).

Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

Duke Energy Kentucky does not object to limited disclosure of the Confidential Information pursuant to an acceptable protective agreement entered into with any intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted.

II. CONCLUSION

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully Submitted,

DUKE ENERGY KENTUCKY, INC.

/s/Rocco D'Ascenzo

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on April 30, 2025; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.³

/s/Rocco D'Ascenzo
Counsel for Duke Energy Kentucky, Inc.

³ *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085, Order (Ky. P.S.C. July 22, 2021).